

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA  
3

4 United States of America,  
5 Plaintiff/Respondent  
6 v.  
7 Gilberto Landeros,  
8 Defendant/Petitioner

Case No.: 2:13-cr-00260-JAD-GWF  
**Order Denying Certificate of Appealability**

9 In 2014, Gilberto Landeros pled guilty to illegally possessing a firearm under 18 U.S.C.  
10 § 922(j).<sup>1</sup> I sentenced him to a prison term of 120 months after finding that he had prior  
11 convictions that qualified as “crimes of violence” under United States Sentencing Guideline  
12 § 4B1.2(a). In 2017, Landeros filed a motion to vacate his sentence, arguing that the Supreme  
13 Court’s decision in *Johnson v. United States*<sup>2</sup>—which deemed unconstitutional part of the  
14 Armed Career Criminal Act’s crime-of-violence definition—rendered his sentence under the  
15 advisory Sentencing Guidelines constitutionally infirm. But after Landeros filed his motion, the  
16 Supreme Court decided *Beckles v. United States*,<sup>3</sup> which found the advisory guidelines still  
17 constitutional after *Johnson*, so I denied his motion to vacate because *Beckles* precluded the  
18 relief he sought.<sup>4</sup>

19 Landeros then moved to have his sentence reevaluated and asked me to appoint him  
20 counsel “in light of the change in law under *Sessions v. Dimaya*.”<sup>5</sup> I explained that *Dimaya*

21 <sup>1</sup> In my previous order, I misstated that Landeros pled guilty to illegally possessing a firearm  
22 under 18 U.S.C. § 922(j) and § 924(a)(2), relying on an inaccurate plea agreement filed at ECF  
23 No. 30. See ECF No. 42. But, despite the plea agreement on the docket, which indicates that  
24 Landeros pled guilty to violations under both statutes, he was convicted only of illegally  
possessing a stolen firearm under § 922(j). This minor error in no way affects my denial of  
Landeros’s motion to reevaluate his § 2255 motion.

25 <sup>2</sup> *Johnson v. United States*, 135 S. Ct. 2551 (2015).

26 <sup>3</sup> *Beckles v. United States*, 137 S. Ct. 886 (2017).

27 <sup>4</sup> ECF No. 39.

28 <sup>5</sup> ECF Nos. 40, 41; see *Sessions v. Dimaya*, 138 S. Ct. 1204, 1223 (2018).

1 doesn't affect the constitutionality of his sentence and denied his motions.<sup>6</sup> Landeros appeals  
2 that order.<sup>7</sup> The Ninth Circuit remanded the case back to me "for the limited purpose of granting  
3 or denying a certificate of appealability."<sup>8</sup>

4 I decline to issue a certificate of appealability in this case. Landeros's challenge to the  
5 "crime of violence" definition in the advisory guidelines is foreclosed by *Beckles*. Landeros's  
6 reliance on *Dimaya* is misplaced. As I explained in my previous order, in *Dimaya*, the Supreme  
7 Court held that a portion of the Immigration and Nationality Act's (INA) crime-of-violence  
8 definition is unconstitutional.<sup>9</sup> Landeros was not convicted or sentenced under the INA, so  
9 *Dimaya* has no impact on his sentence. I do not find that reasonable jurists would disagree.

### 10 Conclusion

11 Accordingly, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that a  
12 certificate of appealability is **DENIED**.

13 Dated: August 14, 2018

14  
15   
16 U.S. District Judge Jennifer A. Dorsey  
17  
18  
19  
20  
21  
22  
23  
24

---

25 <sup>6</sup> ECF No. 42.

26 <sup>7</sup> ECF No. 43.

27 <sup>8</sup> See *United States v. Landeros*, Case No. 18-16479 at ECF No. 3 (9th Cir. Aug. 14, 2018).

28 <sup>9</sup> *Sessions v. Dimaya*, 138 S. Ct. 1204, 1223 (2018).